Editor's note: appealed - aff'd, Civ.No. C-82-518-JLQ (ED Wash. July 27, 1987)

LAWRENCE E. WILLMORTH

IBLA 76-780 Decided May 25, 1982

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting appellant's color-of-title application OR 12689 (Wash.).

Affirmed.

1. Color or Claim of Title: Good Faith -- Words and Phrases

> "Good faith." As used in the Color of Title Act, 43 U.S.C. § 1068 (1976), and regulation 43 CFR 2540.0-5, a claim is held in good faith where the claimant lacks knowledge that the land is owned by the United States. In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to him.

APPEARANCES: Jack Doty, Esq., Chelan, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

In Lawrence E. Willmorth, 32 IBLA 378 (1977), this Board set aside a decision of the Oregon State Office, Bureau of Land Management (BLM), dated August 13, 1976, rejecting color-of-title application OR 12689 (Wash.). In our decision we ordered a hearing to be held to determine whether the appellant, Lawrence E. Willmorth, and his predecessors in interest have held certain lands in good faith and in peaceful, adverse possession under claim or color of title for more than 20 years and have placed valuable improvements thereon. The standards enunciated in our decision are those applicable to a class 1 color-of-title application as set forth at 43 U.S.C. § 1068 (1976). 1/ The lands at issue are Government lots 4 and 5 in sec. 9, T. 27 N., R. 23 E., Willamette meridian, Chelan County, Washington.

1/ The statute allows a claimant to substitute cultivation on some part of the lands at issue for valuable improvements thereon. There being no allegation of cultivation on appellant's color-of-title application, our phrasing of the applicable standards omitted its mention.

A hearing was held on February 14, 1978, in accordance with our decision. In his recommended decision of June 12, 1979, Administrative Law Judge E. Kendall Clarke found that the appellant had carried the burden of proving all the elements necessary for a class 1 color-of-title application. For the reasons set forth below, we decline to adopt Judge Clarke's recommended decision and affirm BLM's initial decision of August 13, 1976.

[1] An essential element of a color-of-title claim is the good faith requirement. 43 U.S.C. § 1068 (1976). Good faith in adverse possession requires that a claimant honestly believe the land is owned by him. See 43 CFR 2540.0-5(b). In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in the light of the facts then actually known to him. Minnie E. Wharton, 4 IBLA 287, 295-96, 79 I.D. 6, 10 (1972), rev'd on other grounds, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975). A claimant must establish a 20-year period of good faith possession under claim or color of title immediately prior to the time claimant learned of the defect in his purported title to meet the good faith requirement of a class 1 color-of-title claim. Claimant may tack on to his own possession a period when the land was possessed by his predecessors in title, but if this is done, their good faith must also be established. See Mable M. Farlow, 30 IBLA 320, 330 (1977). We believe that appellant's color-of-title application is properly rejected for his failure to establish that he and his predecessors in interest held the lands at issue in good faith for the statutory period.

The land involved herein was originally included in an application for the sale of isolated tracts, filed by one Eddie D. McQuarie on June 15, 1910, and assigned serial number Waterville 08574. This application described the NE NW and lots 3, 4, and 5 of sec. 9, described above. Lots 3, 4, and 5, however, had been withdrawn on March 31, 1910, for Powersite No. 135. Accordingly, the Assistant Commissioner of the General Land Office directed the register and receiver to approve the application for the NE NW and reject it for lots 3, 4, and 5. Final certificate for the NE NW issued on October 5, 1911, and patent No. 258227 issued on April 11, 1912. Powersite withdrawal No. 135 was revoked as to lots 3, 4, and 5 on May 3, 1912, and these lots were restored to settlement on June 24, 1912, and entry on July 29, 1912. McQuarie, however, never made further application for these lands.

For some unexplained reason, though title to lots 3, 4, and 5 had clearly not passed to McQuarie, Chelan County commenced to carry these lots on its tax rolls. What is clear, however, is that on April 17, 1922, the treasurer of Chelan County purported to deed these lots to the county, along with numerous others, apparently for the nonpayment of taxes. On October 8, 1929, the county treasurer issued a treasurer's deed to one Grace D. (McQuarie) Lewis for these three lots. In the interim part of lot 4 had been the subject of a powersite reservation for transmission right-of-way. See PP 587, authorized on February 24, 1925. 2/

2/ Lands described in power project No. 587 were reserved as of Feb. 24, 1925, from "entry, location, or other disposal under the laws of the United States until otherwise directed by the [Federal Power] Commission or by

Over the next 30 years a series of mesne conveyances occurred which are not really relevant herein. What is of note, however, is that on June 2, 1947, Grace Lewis, then Grace Santmyer, sold the three parcels, together with other lands, to Norman and Ruth Gallagher. The real estate contract noted: "3. Excluded from Warranty of Title is Gov't Lots 3, 4 and 5 in Section 9, as described above, insofar as an unrecorded patent from the United States Government is concerned."

On November 4, 1958, the Gallaghers sold the subject lots, together with other lands, to Forest Wooton. 3/ Forest Wooton held all three parcels until 1964, when he entered into a sales contract for lot 3 with Richard G. and Norma J. Greene. In 1965, Wooton and the Greenes gave a statutory warranty deed to the Department of Game, State of Washington, for various lands including lot 3. A title insurance policy accompanying this transaction expressly noted: "Title to Government Lot 3, Section 9, Township 27 North, Range 23, E.W. M., as vested, is claimed under mesne conveyance from Tax Deed recorded under auditor's file No. 102245. Said property has not been patented by the United States of America and is, therefore, vested in the United States of America." 4/

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fn. 2 (continued)
Congress." The notice announcing this project further stated that the general determination made by the Commission at its meeting of Apr. 17, 1922, with respect to lands reserved for transmission line purposes, is applicable to these lands. Under section 24 of the Federal Power Act, 16 U.S.C. § 818 (1976), if the Commission determines that the value of lands within a project application will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection for such purpose or purposes and under such restrictions as the Commission may determine. PLO No. 4616, although addressing other matters, refers to lands withdrawn for transmission line project No. 587 as being "open by reason of the general determination of April 17, 1922, under section 24 of the Federal Power Act." 34 FR 6688 (Apr. 19, 1969). Thus, it would appear that the reservation effected by power project No. 587 does not preclude appellant's color-of-title application.

The effect of subsequent reservations on a color-of-title application as, e.g., by powersite classification No. 349 on June 22, 1944, and power project No. 2145 on Aug. 19, 1960, is addressed in Myles Stephenson, 16 IBLA 252 (1974) and cases cited therein.

3/ The Gallaghers' deed to Forest Q. Wooton contained the following language: "This deed is given in completion of a Contract of Sale dated July 3, 1958, and the Warranty is limited to that date and the acts of the Grantors subsequent thereto." Though BLM's decision of Aug. 13, 1976, states that this contract specifically excluded lots 4 and 5 from warranty, this contract was apparently never recorded, and no copy was produced at the hearing.

4/ The file contains a copy of the statutory warranty deed from Wooton and the Greenes to the State of Washington, Department of Game, dated Mar. 12, 1965, and recorded on Mar. 15, 1965. Lot 3 is clearly set forth therein. The policy of title insurance, quoted supra, is also dated Mar. 15, 1965.

Prior to 1965 Wooton had paid the taxes assessed on the three lots. From 1965 on, however, he stopped paying the taxes not only on lot 3, but on lots 4 and 5 as well. There the matter stood until appellant, who had acquired title to adjacent properties, sold a parcel of land which apparently inadvertently included lands in the northwest corner of lot 4 to one Van deMark. Upon being apprised of this fact, appellant attempted to ascertain the present owner of the lot in order to obviate any problems. He was informed that Wooton was the record titleholder. He contacted Wooton and proceeded to acquire both lots 4 and 5, aggregating an excess of 47 acres, for a total of $50, together with payment of back taxes totalling $27.10.

That this was an unusually low price seems evident. The land was assessed for tax purposes at $10 per acre (Tr. 123). Recent sales of land had ranged between $62 and $263 per acre (Tr. 15). Indeed, Willmorth's sale to Van deMark only 3 month later was for approximately $85 per acre, thus 1 acre costing more than the total purchase price for both lots. Willmorth argued at the hearing that he believed that Wooton agreed to this unusually low price because Wooton had no clear access to the lands and because he had lost interest in them. While this evidence may be credible to show Willmorth's state of mind, and indeed, considering the favorable price, a purchaser might be willing to ascribe any number of interpretations to the seller's action, we cannot believe that this explains Wooton's actions in 1965 when he stopped paying taxes after having paid them the previous 7 years.

We believe that a review of the evidence clearly shows that Wooton became aware of the Government's claim to lots 3, 4, and 5 in 1965 when the Washington Title Insurance Company expressly noted that title to lot 3 was in the United States. Wooton had acquired these lands and various others from the Gallaghers whose deed (February 12, 1958) and contract (June 2, 1947) contained an express disclaimer of warranty as to lots 3, 4, and 5. Indeed, since the original tax deed in 1922, all three lots had been treated as a single entity, and had always been conveyed together. It is inconceivable that the title company's statement that lot 3 was owned by the United States would not put Wooton on notice that his title might be equally lacking as to lots 4 and 5. The contemporaneous cessation of tax payments is evidence that this thought occurred to Wooton as well. The quit claim sale at bargain-basement prices is further cumulative evidence of Wooton's state of mind.

The fact that Willmorth may have purchased the property in good faith is insufficient to permit allowance of the color-of-title application. While

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fn. 4 (continued)
BLM's decision of Aug. 13, 1976, states that lot 3 was excluded from the sale to the Department of Game after the title company reported that lot 3 was vested in the United States. If BLM is correct in this assertion, this fact further supports our conclusion that good faith possession was not maintained by appellant and his predecessors for the statutory term.

Yet another title policy, prepared some 5 years earlier on Feb. 4, 1960, disclosed to the Public Utility District No. 1 of Chelan County that lots 3, 4, and 5 were "subject to Power Site Classification No. 349, approved June 22, 1944, File No. 1243941 'B', which states that these lots are unpatented land."

the tacking on of a predecessor's period is permitted, where the possession is not in good faith the chain of title is broken and the statutory period must begin to run anew. See Joe I. Sanchez, 32 IBLA 228 (1977). The obligation to establish a valid color-of-title claim is upon the claimant. The facts set forth above persuade us that appellant has failed to prove the requirement that the lands be held in good faith for the statutory period. Though there is no single fact which precludes a finding of good faith, the assembled facts, taken as a whole, compel a reversal of Judge Clarke's finding of good faith for the necessary period of time. Appellant's inability to show a good faith holding makes unnecessary any discussion of the improvements placed on the subject lands.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the recommended decision of Administrative Law Judge Clarke is not adopted and BLM's decision of August 13, 1976, is affirmed for the reasons given herein.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge